

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID LEE KLUTTZ,)	
)	
Petitioner,)	
)	
v.)	1:20CV647
)	
STATE OF NORTH CAROLINA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Memorandum Opinion, Order, and Recommendation ("Recommendation") filed on June 15, 2021, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 18.) In the Recommendation, the Magistrate Judge recommends that Respondent's Motion to Dismiss, (Doc. 9), be granted, that the Petition, (Doc. 3), be denied, and that a judgment be entered dismissing this action, without issuance of a certificate of appealability. The Recommendation was served on the parties to this action on June 15, 2021. (Doc. 19.) Petitioner filed timely objections, (Doc. 20), to the Recommendation, and a Request for a Certificate of Appealability, (Doc. 21).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is

made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which the objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 18), is **ADOPTED. IT IS FURTHER ORDERED** that Respondent's motion to dismiss this action for being filed beyond the one-year limitation period, (Doc. 9), is **GRANTED**, that Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, (Doc. 3), is **DENIED**, and that this action is **DISMISSED**.

IT IS FURTHER ORDERED that Petitioner's Request for a Certificate of Appealability, (Doc. 21), is **DENIED**.

Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 23rd day of August, 2021.


United States District Judge